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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 16 1996

In the matter of:

Telephone Number Portability

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CC Docket No. 95-116
RM 8535

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, INC. IN RESPONSE TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

AIRTOUCH COMMUNICATIONS, INC.

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AirTouch Communications, Inc. ("AirTouch") hereby submits its reply comments regarding the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding.

Summary of Position

Contrary to the Commission's tentative conclusion and the position of some commenters, an allocation of number portability costs on the basis of carrier revenues or profits would not be competitively neutral. Retail minutes of use is the most competitively neutral allocator. Because of the greater simplicity of an allocation based upon the total lines served by a carrier, however, such an approach would be a reasonable alternative.

The Commission should reject proposals for the pooling of carrier-specific number portability costs. Pooling is inefficient and anticompetitive and contrary to the goals of the Telecommunications Act.

The Commission should allocate shared number portability costs only to carriers who provide number portability and serve ported numbers. Customers of carriers who are not yet providing number portability will derive only indirect benefits from portability and should not be required to share in industry-wide costs as well as to bear the costs that non-porting carriers

will incur just to terminate the calls they originate to the networks of other carriers that are involved in number portability.

The Commission must adopt a single, uniform method for allocating number portability costs nationwide rather than permitting the states to select an allocation methodology. This is the only way to ensure that all telecommunications carriers bear number portability costs on a competitively neutral basis while minimizing the transaction costs of adopting an allocation methodology.

The Commission must prohibit regional databases that function both as an SMS and as a call processing SCP in order to prevent carriers who use other SCPs from being forced to subsidize those who use a centralized SCP.

Finally, the Commission should prohibit carriers from recovering number portability costs from other carriers, but should give them maximum flexibility in deciding how to recover such costs from end users. Competitive neutrality requires that number portability costs be recovered from end users in order to prevent incumbent LECs from passing on all of their number portability costs to other carriers. Competitive neutrality also requires that carriers be permitted to differentiate themselves by deciding individually how to recover number portability costs from their customers.

I. An Allocation of Number Portability Costs on the Basis of Carrier Revenues or Profits Would Not Be Competitively Neutral.

In their opening comments, a number of parties endorsed the Commission's tentative decision to allocate number portability costs on the basis of gross revenues, most of them simply asserting without further elaboration that such an allocation methodology would be competitively

neutral.¹ Several parties advocated additional adjustments to gross revenues, such as the deduction of receipts from other carriers² or the recognition of revenues from retail services only³ or local exchange services only.⁴ Yet no party even attempted to demonstrate how a revenue-based allocation methodology could satisfy the identified criteria for competitive neutrality.

The only sense in which an allocation based upon gross revenues would be competitively neutral is that, as noted by MFS, it would require all industry segments to bear a portion of the shared number portability costs, rather than only one or a few groups.⁵ Yet it is not sufficient that a revenue-based allocation would insure that "everybody pays." In order to be competitively neutral, an allocation methodology must insure that everybody—regardless of industry segment, cost structure, or revenue makeup—pays a fair amount, based upon market presence. The costs and benefits of number portability are directly related to the number of customers a carrier serves, not to its revenues or profits.

Any revenue-based allocation methodology would be administratively complex because of the need to identify reliably the relevant revenues. More importantly, revenue-based allocations would have differing impacts on firms with different cost structures and revenue

¹ See, e.g., Nextel Communications, Inc. Comments at 3; Frontier Corporation Comments at 4; ITCs, Inc. Comments at 3; Florida Public Service Commission Comments at 3; Association for Local Telecommunications Services Comments at 4.

² See, e.g., Pacific Telesis Group Comments at 4-5.

³ See, e.g., NYNEX Comments at 8-9; Ameritech Comments at 6-7.

⁴ See, e.g., Telecommunications Resellers Association Comments at 8.

⁵ MFS Communications Company, Inc. Comments at 7.

mixes, whatever the source of those differences. Deducting payments to other carriers, as advocated by carriers whose cost structures are dominated by such payments, would ameliorate the impact on such firms. Deducting receipts from other carriers, as advocated by some carriers with substantial revenues from such sources, would ameliorate the effect on those carriers. Deducting marketing expenses would tend to equalize the impact on carriers such as incumbent LECs who have relatively low marketing costs and carriers such as IXCs, CMRS carriers, and competitive LECs who incur more marketing expenses than incumbent LECs. A potentially endless series of adjustments to gross revenues would be required in order to achieve competitive neutrality across all firms, regardless of their cost structures or revenue makeup. An allocation based on profits would be competitively neutral in the short run among firms that currently earn a profit, but it would allocate no number portability costs to many of the new entrants who will benefit most directly from number portability, because they are not yet profitable, and it would affect investment patterns, thus departing from competitive neutrality over time. The Commission must not allocate number portability costs on the basis of carrier revenues or profits.

As discussed in AirTouch's opening comments, the most competitively neutral approach to allocating shared number portability costs would be on the basis of each carrier's retail minutes of use. A number of commenters, however, have advocated an allocation based upon the number of lines served by the carrier.⁶ Although such an approach would be somewhat

⁶ See, e.g., California Public Utilities Commission Comments at 7; Public Utilities Commission of Ohio Comments at 6. The most thorough proposal in this regard is that of SBC Communications Inc., which proposes an allocation based upon "Elemental Access Lines," under which a share of number portability costs would be allocated to each portion of the total local, intraLATA and interLATA service package provided to a customer. SBC Comments at 7-9. See

inferior to an allocation based upon minutes of use because it does not recognize that all customers are not equally valuable to the serving carrier, it would be simpler to administer and would be vastly superior to an allocation based upon carrier revenues.

From the standpoint of competitive neutrality, the use of total access lines or presubscribed lines as the basis for allocating number portability costs would be nearly as good as the use of total minutes of use, and it would avoid the reliance upon estimates or usage assumptions that would be required in order to allocate number portability costs on the basis of minutes of use.⁷ If number portability costs were allocated on the basis of each carrier's number of access or presubscribed lines, when a customer changed carriers the additional shared number portability cost borne by the new carrier would exactly equal the shared number portability cost saved by the carrier that lost the customer. Because customers are not of equal value to carriers (high volume customers generally are worth more than low volume customers to a carrier), it would be preferable to allocate number portability costs on the basis of minutes of use. However, the costs of a usage-based allocation methodology may outweigh its benefits.

also, MCI Telecommunications Corporation Comments at 5 (proposing allocation based upon total working telephone numbers in portable NXXs or total portable NXXs).

⁷ In *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2624-25 (1995) (¶ 87), the Commission chose to allocate number administration costs on the basis of revenues, rather than numbers served, based in part upon concerns that an allocation based upon total numbers served would charge incumbent carriers again for the costs of number assignments that they had already borne. Because the Commission here seeks to allocate future costs of an activity that was not previously a part of carrier operations, that concern is not present. Nor would an allocation of number portability costs disproportionately burden fast-growing carriers, wireless carriers, or any other industry segment or firm, because the benefits of number portability are directly related to the number of active lines that a carrier serves. Cf. *id.* at 2629-30 (¶ 100).

It is important to note that shared number portability costs should be allocated on the basis of numbers actually assigned to end user customers, and not on the basis of numbers assigned by the NANPA for use by a carrier. Because numbers are assigned to carriers in blocks of 10,000 that are dedicated to individual switches, almost all carriers have substantially more numbers assigned to them than are actually in use, but the proportions vary significantly from carrier to carrier. Carriers that, for technical reasons, have large quantities of assigned but unused numbers would be unfairly burdened by an allocation based upon numbers assigned to carriers rather than numbers in use.

II. Proposals for the Pooling of Carrier-Specific Number Portability Costs Are Inconsistent with the Telecommunications Act.

Only the industry-wide costs of establishing and maintaining the regional number portability SMS databases should be shared by all carriers. Several incumbent LECs and a few state commissions have supported the proposal to pool carrier-specific costs incurred directly to support number portability.⁸ Some commenters have even proposed to pool costs incurred to upgrade carriers' networks to SS7, IN or AIN capability.⁹ Such proposals are inefficient and anticompetitive and reflect the mind set of monopoly regulation, not the development of competition.

For nearly a century, telecommunications policy in the United States has proceeded from the assumption that a single, regulated monopoly can most efficiently provide high quality

⁸ See, e.g., NYNEX Comments at 9-10; United States Telephone Association Comments at 2-5; GTE Comments at 5-6; California Public Utilities Commission Comments at 13; Florida Public Service Commission Comments at 4.

⁹ See, e.g., United States Telephone Association Comments at 2-5; GTE Comments at 5-6.

telephone service at affordable rates. Under such an assumption, there may be some validity to the concept of pooling costs and revenues, so that carriers in adjacent areas spread the costs of serving less economic areas. In the absence of competition, the concept of competitive neutrality is irrelevant, and it may make sense to allow carriers to recover certain costs regardless of whether they were efficiently incurred.

The Telecommunications Act of 1996 is based upon the premise that efficiency is more often the product of competition than the result of regulation. Pooling of carriers' costs provides incentives for inefficiency, as even some proponents of pooling acknowledge.¹⁰ It would be anticompetitive to require carriers that design and build efficient number portability support systems to subsidize the costs incurred by their less efficient competitors. As one commenter has noted, "[t]hese costs are clearly costs of doing business in this changing market."¹¹ Competitive neutrality requires that carriers bear their own costs of doing business, and not share them with their competitors.

That the requirement to provide and support number portability may require substantial investments by small carriers, especially rural carriers, is beyond dispute. Yet this is a universal service problem, not a competitive imbalance. Small and rural carriers that incur excessive costs to support number portability may recover those costs through universal service funding, whether universal service is structured as payments to carriers to cover the difference between affordable rates and the total cost of service or as payments to customers to help them afford the full cost

¹⁰ See, e.g., California Public Utilities Commission Comments at 13; Florida Public Service Commission Comments at 4.

¹¹ Public Utilities Commission of Ohio Comments at 10.

of service. Interference with the competitive process should be limited to the explicit universal service mechanisms expressly endorsed by Congress, not expanded to encompass other, less explicit forms of subsidy. The Commission should reject the idea of pooling carrier-specific number portability costs.

III. Only Carriers Who Provide Number Portability Should Bear Shared Number Portability Costs.

As suggested by some commenters,¹² the Commission should allocate shared number portability costs among only those carriers who actually provide number portability and serve ported numbers. To do otherwise would disproportionately burden those carriers and their customers who derive only indirect benefits from number portability.

Even assuming that the industry is able to meet the Commission's somewhat ambitious implementation schedule, wireless carriers will not be providing number portability until six to twenty months after it is implemented by wireline carriers in the 100 largest MSAs.¹³ At the outset, even new wireless entrants will not benefit as much from number portability as their wireline counterparts because of lesser customer resistance to changing their wireless numbers. Over the medium term, wireline carriers outside the 100 largest MSAs need not provide number portability until they receive a bona fide request, and numerous carriers serving predominantly rural areas may not provide number portability for many years. In the long run, some carriers

¹² See, e.g., United States Telephone Association Comments at 5-6; MCI Telecommunications Corporation Comments at 3, 5.

¹³ While the Commission has established a deadline, rather than a uniform implementation date, for wireless carriers to begin providing number portability, as a practical matter all cellular carriers must implement number portability at the same time because of its effect on roaming relationships.

in a fully competitive market may seek to differentiate themselves by marketing their services at lower rates without offering their customers number portability.

All of these carriers will nonetheless incur costs to support number portability despite deriving no direct benefit from it. Every carrier that originates telecommunications traffic must be able to have its customers' calls terminated in areas where number portability has been implemented, and all carriers will incur costs in order to terminate such calls. The LRN methodology that is likely to be employed nationwide generally concentrates those costs on the N-1 switch (*i.e.*, the switch immediately before the terminating switch), but almost all carriers outside the initial implementation areas will be in the position of operating the N-1 switch for some calls to overlapping or adjacent service areas long before they are required to provide number portability themselves.

As discussed elsewhere, carriers should bear their own carrier-specific number portability costs, most of which must be incurred in order to support number portability whether or not a particular carrier provides number portability or serves ported numbers.¹⁴ To require carriers who do not serve ported numbers to bear shared number portability costs to the same extent as those who do would not be competitively neutral. Those who derive no direct benefit from number portability should not be forced to share the costs incurred in order to enable others to do so.

IV. This Commission Should Establish Uniform, Nationwide Rules for the Allocation of Number Portability Costs among Carriers.

¹⁴ The administrative cost associated with transferring a particular number from one carrier to another may be the only carrier-specific cost that is unique to carriers directly involved in the porting of numbers.

Some state commissions have contended that they should be permitted to establish the method of allocating number portability costs within their states.¹⁵ It is vitally important that the Commission establish a uniform national methodology for allocating number portability costs among carriers. While § 251(e)(1) permits the Commission to delegate some of its jurisdiction over number administration to the states, § 251(e)(2) expressly requires that number portability costs "be borne . . . on a competitively neutral basis as determined by the Commission." Congress did not authorize the Commission to delegate the responsibility for determining a competitively neutral basis for cost allocation, and the adoption of a uniform, national cost allocation methodology is essential to the development of a competitive national telecommunications market.

Because of differing attitudes about the desirability of competition, state regulators may allocate excessive number portability costs to incumbents, new entrants, or carriers using particular technologies. Even without regard to possible biases on the part of state regulators, the potentially enormous transaction costs that would be associated with state-by-state determinations of the method for allocating number portability costs compel the adoption of a single methodology and administrative procedure. While the cost of separate proceedings in several states may not be significant for a very large, regional firm such as a Bell operating company, smaller firms and new entrants cannot afford the luxury of arguing the same issues in up to fifty-one different proceedings. The Commission must avoid such problems by mandating a single number portability cost allocation methodology and procedure.

¹⁵ See, e.g., California Public Utilities Commission Comments at 9-11; Missouri Public Service Commission Comments at 2.

V. The Commission Should Prohibit Database Configurations that Combine Service Management System and Signal Control Point Functions.

In its opening comments on the *Further Notice*, AT&T noted that the Commission should prohibit the establishment of regional SMS/SCP pairs.¹⁶ Such a configuration would combine in some fashion a state or regional Service Management System database, the costs of which should be borne by all carriers in the state or region, and a "downstream" Service Control Point database actually used during call processing, the costs of which should be borne only by the carriers who actually use the SCP. Because of the difficulty of segregating the SMS and SCP costs if they are operated in combination by the regional LNPA or state SMS administrator, such combinations should be prohibited.

Initially, it may be most cost effective for a single SCP to be used for call processing throughout a region, and it thus might seem logical to combine the single SCP with the regional SMS database that serves as the central repository of the data required to complete calls to NXXs in the region containing ported numbers, but that is not actually used in real time call processing. Traffic volumes are likely to make such configurations impractical fairly quickly, however, and call processing will soon require numerous SCPs operated by individual carriers and perhaps non-carriers.

Because of the need for multiple SCPs to handle the call processing work load and the likelihood that many carriers will prefer to combine number portability data with other, proprietary data in their SCPs, any SCP associated with a regional SMS would operate in competition with SCPs operated by carriers for their own use and SCPs operated by carriers and

¹⁶ AT&T Comments at 11-12.

perhaps non-carriers for the use of others.¹⁷ Because carriers will have numerous options for the use of SCPs for call completion, it would not be competitively neutral to require carriers who do not use a regional, SMS-associated SCP to bear any of the cost associated with such an SCP. Indeed, because SCP access for number portability will in all likelihood be a competitive market almost from the outset, market-based pricing would be the only competitively neutral approach to recovering the cost of any centralized SCP.

VI. The Commission Must Not Permit Carriers to Pass On Number Portability Costs to Other Carriers.

At least one commenter has proposed that number portability costs be recovered through interconnection charges, rather than charges to end user customers.¹⁸ The Commission should not permit carriers to recover either their carrier-specific number portability costs or their share of shared number portability costs from other carriers. End user customers of all carriers will benefit from the spur to competition provided by the advent of number portability, and carriers must be required to recover their number portability costs from their own end user customers. If carriers were permitted to recover such costs from other carriers, in the end little or none of these costs would be borne by incumbent LECs and their customers.

For the foreseeable future, all carriers must deal with incumbent LECs to varying degrees, but this generally is not true of any other industry segment. If carriers were permitted to pass on number portability costs to other carriers, because of their control of bottleneck

¹⁷ Carriers will be able to access SCPs operated by incumbent LECs as unbundled network elements. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, ___ FCC Rcd ___ (August 8, 1996), at 232-36 (¶¶ 484-92).

¹⁸ See ITCs, Inc. Comments at 3.

facilities incumbent LECs could shift most or all of their number portability costs to other carriers, imposing little or none on their end user customers. Other carriers, lacking the market power of incumbent LECs, generally would be unable to do the same. Although incumbent LECs' ability to do so would erode over time, the major costs of developing and implementing number portability will be incurred and borne during the first few years. Accordingly, permitting carriers to pass on number portability costs to other carriers effectively would mean that incumbent LECs' customers would bear little or none of the cost of number portability. Such an approach would clearly violate the requirement of competitive neutrality.

VII. The Commission Should Give Carriers Maximum Flexibility in Recovering Number Portability Costs from End Users.

In the Further Notice, the Commission requested comments concerning whether the competitive neutrality requirement of § 251(e)(2) applies to the recovery of costs from customers, or only to the initial allocation of costs among carriers. Some commenters, primarily incumbent LECs, have argued that competitive neutrality requires that carriers recover number portability costs from end users through an explicit number portability surcharge.¹⁹ Other commenters, primarily competitive LECs, have argued the opposite: that competitive neutrality requires the Commission to prohibit explicit surcharges.²⁰ The only competitively neutral approach to number portability cost recovery is to grant all carriers maximum flexibility in deciding how to recover their number portability costs from end users, as long as they do so consistently with whatever ratemaking or pricing rules otherwise govern them.

¹⁹ See, e.g., GTE Comments at 11; United States Telephone Association Comments at 15-16; NYNEX Comments at 12.

²⁰ See, e.g., Association for Local Telecommunications Services Comments at 4.

Commenters who advocate mandatory end user surcharges for the recovery of number portability costs generally argue that this is necessary in order to prevent customers from switching carriers in order to avoid number portability surcharges. Those who oppose such surcharges contend that prohibiting them is necessary in order to prevent incumbents from "disparaging" number portability. Both positions ignore the fact that differentiation is the essence of competition. If customers change carriers in order to avoid explicit number portability surcharges, it will be because some carriers either have found more creative ways to recover their number portability costs or have chosen to accept smaller returns on their investment in number portability. If incumbents "disparage" number portability by explicitly charging their customers for it, new entrants may seek to obtain customers by not charging for number portability. For this Commission to either mandate or prohibit end user surcharges (or any other specific cost recovery mechanism) would interfere with this competitive interplay and thus violate, not support, competitive neutrality.


The competitive process, and hence competitive neutrality, requires each firm to succeed or fail based on its own decisions and performance in the marketplace. To the extent that carriers remain generally subject to regulatory constraints on their pricing because competition has not yet blossomed, those constraints may limit the ways in which they may recover number portability costs. Beyond that, however, the Commission should neither prohibit nor mandate end user surcharges or any other method of recovering number portability costs from end users, but should give carriers maximum flexibility in deciding how to do so.

Conclusion

For the foregoing reasons, the Commission should:

- allocate number portability costs on the basis of minutes of use or customer lines in service, and not on the basis of carrier revenues;
- require carriers to bear their own carrier-specific number portability costs;
- allocate shared number portability costs only to carriers that provide portability;
- establish a single nationwide method for allocating shared number portability costs;
- prohibit SMS/SCP combinations;
- require carriers to recover number portability costs from their end users and not from other carriers; and
- give carriers maximum flexibility in deciding how to recover number portability costs from their customers.

Respectfully submitted,


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